

REMARKS/ARGUMENTS

The claims have been divided into Groups as follows:

Group I: Claim(s) 1-8, 15-21 and 27-33, drawn to a crystalline layered compound of a particular chemical composition and having the XRD pattern as detailed in Table 1.

Group II: Claim(s) 9-14, 22-26 and 34-43, drawn to a zeolite composition having a particular pore structure and having the XRD pattern as detailed in Table 2 or 3.

Applicants elect, with traverse, Group I, Claims 1-8, 15-21 and 27-33 (drawn to a crystalline layered compound of a particular chemical composition and having the XRD pattern as detailed in Table 1), for examination.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (MPEP §803). The burden is on the Examiner to provide reasons and/or examples to support any conclusion in regard to patentable distinction (MPEP §803). Moreover, when citing lack of unity of invention in a national stage application, the Examiner has the burden of explaining why each group lacks unity with each other group specifically describing special technical features in each group (MPEP § 1893.03(d)).

The Office has asserted that Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

“The special technical feature in the claims is the material in the layered structure having the XRD pattern as seen in Claim 1. The claims of group II show a particularly different XRD pattern with no apparent link between the claims based on the special technical feature. For example the claims of the second group have a different XRD pattern from the claims of Group I, which shows that the two materials are in somewhat different with no obvious link in the instant claims. Therefore, the claims as listed do not relate to a single general inventive concept and restriction is proper.”

Annex B of the Administrative Instructions under the PCT at (b) Technical Relationship states:

“The expression “special technical features” is defined in Rule 13.2 as meaning those technical features that defines a contribution which each of the inventions, considered as a whole, makes over the prior art. The determination is made on the contents of the claims as interpreted in light of the description and drawings (if any).”

Applicants respectfully submit that the Examiner has not provided any indication that the contents of the claims *interpreted in light of the description* was considered in making the assertion of a lack of unity and therefore has not met the burden necessary to support the assertion.

Applicants point out that the zeolites of claims 9-14 (Group II) are the corresponding products of the methods of claims 15-21 (Group I). Accordingly, as the Office has allegedly defined the Groups by the XRD pattern and not the subject matter class (e.g., product versus method of making versus method of using, etc.), claims 9-14 should be included with claims 15-21 of Group I.

Furthermore, MPEP §806.03 states:

“Where the claims of an application define the same essential characteristics of a *single* disclosed embodiment of an invention, restriction therebetween should never be required. This is because the claims are not directed to distinct inventions; rather they are different definitions of the same disclosed subject matter, varying in breadth or scope of definition.”

Applicants respectfully submit that the Office has not considered the relationship of the inventions of Groups I and II with respect to MPEP §806.03. Therefore the burden necessary according to MPEP § 1893.03(d) to sustain the conclusion that the groups lack of unity of invention has not been met.

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the requirement for restriction.

Applicants therefore request that the requirement for restriction be withdrawn.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice thereof is earnestly solicited.

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